

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOSHUA D. COOK,

Plaintiff,

v.

Civil Action 2:20-cv-781

Judge James L. Graham

Chief Magistrate Judge Elizabeth P. Deavers

JUSTIN SICILIAN, *et al.*,

Defendants.

ORDER AND REPORT AND RECOMMENDATION

This matter is before the Court for consideration of Plaintiff's Application for Entry of Default (ECF No. 17), Motion for Default Judgment (ECF No. 18), Motion for Request of Leave of Court (ECF No. 19), and Motion for Injunction (ECF No. 20). In his Motion for Request of Leave of Court, Plaintiff asserts that Defendants have avoided service and requests that the Court complete personal service on Defendants. (ECF No. 19.) In his Motion for Injunction, Plaintiff requests an order directing Defendants to stop avoiding service of summons. (ECF No. 20.)

Federal Rule of Civil Procedure 55 sets forth the two-step sequential procedure for obtaining default judgment. A party must first apply for and obtain an entry of default from the Clerk. Fed. R. Civ. P. 55(a). The Clerk must enter default "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise[.]" *Id.* "There must be effective service of process on a defendant before an entry of default can be made, however. Without proper service of process, the district court is without jurisdiction to make an entry of default against a defendant." *Stewart*

v. X-Treme Elec. Scooters, No. 1:13 CV 01535, 2015 WL 128010, at *2 (N.D. Ohio Jan. 8, 2015).

Here, the docket reflects that service of process was completed on all Defendants on February 28, 2020. (ECF No. 15.) The deadline for Defendants to plead or otherwise move in response to the Complaint is March 20, 2020. (*Id.*) Defendants timely filed an Answer on March 17, 2020. (ECF No. 22.) For these reasons, Plaintiff's Motion for Request of Leave of Court (ECF No. 19) and Motion for Injunction (ECF No. 20) are both **DENIED AS MOOT**. It is, therefore, **RECOMMENDED** that the Clerk deny the Application for Entry of Default (ECF No. 17). It is **FURTHER RECOMMENDED** that Plaintiff's Motion for Default Judgment (ECF No. 18) be **DENIED**.

PROCEDURE ON OBJECTIONS

If any party seeks review by the District Judge of this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties objections to the Report and Recommendation, specifically designating this Report and Recommendation, and the part in question, as well as the basis for objection. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b).

The parties are specifically advised that the failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *See, e.g., Pfahler v. Nat'l Latex Prod. Co.*, 517 F.3d 816, 829 (6th Cir. 2007) (holding that "failure to object to the magistrate judge's recommendations constituted a waiver of [the defendant's] ability to appeal the district

court's ruling"); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005) (holding that defendant waived appeal of district court's denial of pretrial motion by failing to timely object to magistrate judge's report and recommendation). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Robert v. Tesson*, 507 F.3d 981, 994 (6th Cir. 2007) ("[A] general objection to a magistrate judge's report, which fails to specify the issues of contention, does not suffice to preserve an issue for appeal . . .") (citation omitted)).

IT IS SO ORDERED.

Date: March 18, 2020

/s/ *Elizabeth A. Preston Deavers*
ELIZABETH A. PRESTON DEAVERS
CHIEF UNITED STATES MAGISTRATE JUDGE